

FILED

PATRICK KEANEY
Clerk U.S. District Court

No. CIV 12-487-RAW-KEW

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Fed. R. Civ. P. 56(c)(1).

The respondent alleges the writ is moot, because petitioner's sentence is being administered properly. The record shows petitioner was sentenced to serve 17 years for the crime of Distribution of Controlled Substance within 2,000 feet of Park or School. He is required to serve 50% of the sentence, which is 8 1/2 years, before he begins his eligibility for earned credits. *See* Okla. Stat. tit. 63, § 2-401(F)(1). His Judgment and Sentence was entered on February 25, 2009, and 8 1/2 years from that date is August 25, 2017.


According to the affidavit by Kevin Moore of the DOC Sentence Administration Unit, petitioner received incorrect responses to his April 2012 Request to Staff and Grievance regarding the execution of his sentence. Petitioner erroneously was advised he had to serve 85% of his sentence before eligibility for earned credits, when the correct response was 50%. The respondent asserts that because petitioner has not yet served 50% of his sentence, this incorrect information did not affect the administration of his sentence, and he has not suffered any collateral consequences from the mistake. After careful review of the record, the court finds there is no genuine material factual issue, and summary judgment should be granted to the respondent. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-51 (1986).

The court further finds petitioner has failed to make a "substantial showing of the denial of a constitutional right," as required by 28 U.S.C. § 2253(c)(2) or that "reasonable jurists would find [this] court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Therefore, petitioner is denied a certificate of

appealability. *See* Rule 11(a) of the Rules Governing Section 2254 Cases.

ACCORDINGLY, the respondent's motion for summary judgment (Docket No. 10) is GRANTED, and this action is, in all respects, DISMISSED. Furthermore, petitioner is DENIED a certificate of appealability.

IT IS SO ORDERED this 22nd day of September 2014.



RONALD A. WHITE
UNITED STATES DISTRICT JUDGE